TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 249.

GEORGE A. PETTIBONE, APPELLANT,

vs.

JASPER C. NICHOLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

FILED APRIL 14, 1906.

(20,191.)

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INDEX.

	Original.	Print.
Petition for writ of *habeas corpus*	1	1
Complaint	3	2
Warrant	4	3
Application for requisition	5	3
Affidavit for requisition	7	5
Requisition	9	6
Return of E. L. Whitney, warden, &c.	15	10
Supplemental return of E. L. Whitney, warden	19	13
Writ of *habeas corpus*	25	16
Order for writ of *habeas corpus*	26	17
Stipulation waiving personal presence of petitioner	27	17
Writ of *habeas corpus*	28	18
Answer to writ	29	18
Indictment	32	20
Bench warrant	37	23
Stipulation as to return, &c.	39	24
Motion to strike out answer to return	40	25
Demurrer to answer to return	41	25

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	Original	Print.
Order sustaining motion and demurrer, quashing writ of *habeas corpus*, allowing exceptions, and granting time to file bill of exceptions and appeal bond	42	26
Bill of exceptions	43	26
Stipulation as to return	43	26
Stipulation as to answer	44	27
Motion to strike out	44	27
Demurrer	44	27
Order on motion and demurrer	44	27
Judgment entered	45	27
Judge's certificate to bill of exceptions	45	28
Petition for appeal	46	28
Order allowing appeal	47	29
Assignment of errors	48	29
Order fixing amount of bond	50	30
Bond on appeal	52	31
Writ of error	55	32
Citation and service	58	33
Return to writ of error	61	34
Clerk's certificate	62	34

1 *Petition.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Comes now the above named George A. Pettibone by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and complains to this Court and petitions this Court, or the Judge thereof, for the issuance of a Writ of *Habeas Corpus* herein directed to Jasper C. Nichols, Sheriff of Canyon County, State of Idaho, and for the grounds of his complaint and petition, he alleges and states:

First: That the said George A. Pettibone, in whose behalf the writ of *Habeas Corpus* is applied for here, is imprisoned and restrained of his liberty; that the name of the officer and person by whom he is so imprisoned and restrained is Jasper C. Nichols, the duly qualified and acting Sheriff of Canyon County, in said State. That said Nichols is aided and assisted by certain subordinate officers and employees in and about and around the County Jail of said

2 Canyon County, under the direction and control of said Sheriff as aforesaid, and subject only to the orders of said officers so named as aforesaid.

Second: That the facts concerning the detention, imprisonment and restraint of your petitioner, and the authority claimed by the said officers, and each of them, for such detention, restraint and imprisonment, so far as the same is known to your petitioner, is as follows, to-wit:

a. That your petitioner is a resident and citizen of the State of Colorado, and the United States of America, having his habitation and abode in the City and County of Denver in said State.

b. That he was, on the 17th day of February, A. D. 1906, and for more than five years prior thereto, an actual *bona fide* citizen and resident of said City, County and State as aforesaid.

c. That your petitioner, prior to the acts hereinafter complained of, had not been in the State of Idaho, in any way, shape or form, for a period of more than ten years theretofore.

d. That on or about the 30th day of December, A. D. 1905, one Frank Stuenenberg, as your petitioner is informed and believes, a resident and citizen of the town of Caldwell, in the County of Canyon and State of Idaho, came to his death by reason of the explosion of a bomb, the particulars of which are unknown to your petitioner. That at no time thereafter, until the occurrence of the acts herein complained of, was your petitioner within either the town of Caldwell or the County of Canyon of the State of Idaho, either in his personal bodily presence, or otherwise.

e. That on or about the 12th day of February, A. D. 1906, one Owen M. Van Duyn caused a sworn complaint made by himself to be filed in the office of one M. I. Church, Probate Judge in and for the County of Canyon and State of Idaho, which said complaint was and is in words and figures as follows to-wit:

3 In the Probate Court, County of Canyon, State of Idaho.

STATE OF IDAHO, Plaintiff,
vs.
GEORGE A. PETTIBONE, Defendant.

Complaint—Criminal.

Personally appeared before me this 12th day of February, 1906, Owen M. Van Duyn of Caldwell, Idaho, in the County of Canyon, who, first being duly sworn, complains and says:

That George A. Pettibone of Denver, Colorado, on the 30th day of December, 1905, at Caldwell, in the County of Canyon and State of Idaho, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought, in and upon Frank Steunenberg, make an assault, and the said George A. Pettibone, a certain bomb, then and there loaded with a certain destructive explosive, then and there unlawfully, wilfully, deliberately, premeditatedly and with malice aforethought did throw at and against and explode at and against the said person of the said Frank Steunenberg, and that the said George A. Pettibone with the said bomb aforesaid, by means of shooting off, discharging and exploding as aforesaid against the person of the said Frank Steunenberg aforesaid, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought, strike, penetrate, wound, injure, and inflict upon the said Frank Steunenberg, as aforesaid, one mortal wound, of which said mortal wound, the said Frank Steunenberg did die, upon the 30th day of December, 1905.

4 All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Idaho.

Said complaint- therefore prays that a warrant may issue for the arrest of said George A. Pettibone and that he may be dealt with according to law.

OWEN M. VAN DUYN.

Subscribed and sworn to before me this 12th day of February, 1906.

[SEAL.] M. I. CHURCH,
Probate Judge.

f. That thereafter and on, to-wit, the said 12th day of February A. D. 1906, the said M. I. Church, Probate Judge of said County, did issue his warrant of arrest, which said Warrant of Arrest, so issued as aforesaid, was and is in words and figures as follows, to-wit:

In the Probate Court of the County of Canyon, State of Idaho.

STATE OF IDAHO, *County of Canyon, ss:*

The People of the State of Idaho to any Sheriff, Deputy Sheriff, Constable, Marshal or Policeman of said State or of our said County:

A Complaint, Upon Oath, having this day been laid before me by Owen M. Dan Duyn charging that the crime of Murder has been committed within our jurisdiction, and accusing George A. Pettibone thereof,

5 You are therefore commanded forthwith, to arrest the above named George A. Pettibone, and bring him before me, at my office in the Court House in said County, or in case of my absence or inability to act, before the nearest and most accessible Magistrate in our said County.

Witness my hand and seal of our said Court, this 12th day of February, A. D. 1906.

[SEAL.] M. I. CHURCH,
Probate Judge.

g. That thereafter and on, to-wit., the said 12th day of February A. D. 1906, the said Owen M. Van Duyn did prepare an application for a requisition to be issued by the Governor of the State of Idaho to the Governor of the State of Colorado, which said Application for a Requisition was and is in words and figures as follows, to-wit:

Office of the Prosecuting Attorney of Canyon County, State of Idaho.

CALDWELL, IDAHO, *February 12th,* 1906.

To his Excellency the Governor of the State of Idaho.

SIR: In the matter of the State of Idaho, Plaintiff, *vs.* George A. Pettibone, defendant, now on file in the Probate Court of Canyon County, Idaho, I have the honor herewith to make application for a requisition upon the Governor of Colorado, for George A. Pettibone, who is charged in this County with the crime of felony, to-wit, murder, as will more particularly appear from the certified copy of complaint of Owen M. Van Duyn, now on file in the Probate Court of Canyon County, State of Idaho, which said certified copy of said Complaint is herewith submitted, and who, as it appears from the affidavit of myself herewith submitted, is a fugitive from justice of this State. In support of the application I enclose herewith, in duplicate, certified copies of the original complaint and Warrant of Arrest against the said George A. Pettibone, and duplicate

6 originals of this certificate, and the affidavit alleging the facts required by law to be established, and I herewith and hereby respectfully certify:

First.

That in my opinion the ends of justice require that the said George A. Pettibone be brought back to this State for trial at the public expense as a charge upon this State.

Second.

That I have, as I believe, within my reach, and will be able to produce upon the trial, evidence sufficient to secure the conviction of the said George A. Pettibone of the crime charged in the Complaint.

Third.

No other application has been made, nor has any requisition been issued for the said George A. Pettibone growing out of this transaction set out in the present exemplification of the record.

Fourth.

That the said George A. Pettibone is not now under arrest in the State of Colorado, but he is now situated, as I believe, in the City of Denver, State of Colorado.

Fifth.

That this application is not made for the purpose of enforcing the collection of a debt or for any private purpose whatever, and if the requisition hereby applied for be granted, the criminal proceedings shall not be used for any of said objects.

Sixth.

That said George A. Pettibone is charged with the crime of felony, to-wit: the murder of Frank Steunenberg, committed at Caldwell, in the County of Canyon, State of Idaho, on the 30th day of December, 1905, all of which will more particularly appear from the Complaint on file in the office of the Probate Judge of Canyon County, State of Idaho, a certified copy of which said complaint is herewith submitted, and to which reference is hereby made.

7 Seventh.

The reason why application for a requisition has not sooner been made is because the evidence connecting said George A. Pettibone with the crime charged in the complaint has just been discovered.

Eighth.

That the full name of the person for whom requisition is asked is George A. Pettibone, and the name of the person who is proposed as the agent of the State to present this requisition to the Governor of the State of Colorado is James C. Mills, Jr.

Ninth.

I name said James C. Mills, Jr. as a proper person to act and be designated as such agent, and hereby certify that he has no private

interest in the arrest of George A. Pettibone, said fugitive from justice.

I am respectfully yours,

OWEN M. VAN DUYN,
Prosecuting Attorney in and for the
County of Canyon, State of Idaho.

h. That on the said 12th day of February, A. D. 1906, the said Owen M. Van Duyn did prepare an affidavit in support of said application for a requisition, which said affidavit was and is in words and figures as follows, to-wit:

Affidavit in Support of Application for Requisition.

STATE OF IDAHO, *County of Canyon, ss:*

Owen M. Van Duyn, being first duly sworn, deposes and says that he is the duly elected, qualified and acting prosecuting attorney for the Canyon County, State of Idaho; that on the 12th day of February, 1906, he made a criminal complaint before Probate Judge M. I. Church, of Canyon County, Idaho, charging one George A. Pettibone with the crime of murder of Frank Steunenberg; that the said Probate Judge thereupon duly issued a Warrant for the ar-
8 rest of the — George A. Pettibone; that the offense of murder is in this State a felony; that affiant is reliably informed that said George A. Pettibone left the county of Canyon, and State of Idaho on or about January 1st, 1906; that he is likewise reliably informed that the said George A. Pettibone is at present in the State of Colorado; that he believes the said George A. Pettibone to be in the State of Colorado for the reason that he has been so informed by prominent and reliable citizens of the County of Ada, State of Idaho; that the said George A. Pettibone was in the State of Idaho on the date of the murder of said Frank Steunenberg; that said George A. Pettibone is a fugitive from the justice of the State of Idaho; that he request- a requisition upon the Governor of the State of Colorado for the purpose of bringing said George A. Pettibone to the county of Canyon, State of Idaho, to try him for the crime above named; that the object of having the said George A. Pettibone brought — the County of Canyon from the State of Colorado is that he may be punished for the crime with which he is charged in this County, and not for the purpose of bringing against him any civil claim, suit, action or proceeding, or for any purpose whatever except to have him answer to the crime charged against him.

OWEN VAN DUYN.

Subscribed and sworn to before me this 12th day of February, 1906.

[SEAL.] M. I. CHURCH,
Probate Judge of Canyon County, Idaho,
also Clerk of the Probate Court of Canyon County, Idaho.

i. That thereafter the said Owen M. Van Duyn did cause the said Application and the said Affidavit, so prepared as aforesaid, to be presented to the Governor of the State of Idaho.

j. That thereafter and on, to-wit, the 13th day of February A. D. 1906, such proceedings were had in the office of the Governor of the State of Colorado, requiring the arrest of the body of your petitioner, which said requisition was and is in words and figures as follows, to-wit:

9

STATE OF IDAHO,
EXECUTIVE DEPARTMENT.

The Governor of the State of Idaho to His Excellency the Governor of the State of Colorado:

Whereas, It appears from the annexed papers, duly authenticated in accordance with the laws of this State, that George A. Pettibone stands charged by Owen M. Van Duyn County Att'y of Canyon County, Idaho, with the crime of Murder committed in the County of Canyon and said State, and it having been represented to me that he has fled from justice of this State and may have taken refuge in the State of Colorado,

Now, Therefore, Pursuant to the provisions of the Constitution and Laws of the United States, in such case made and provided, I do hereby require that said George A. Pettibone be arrested and delivered to J. C. Mills, Jr., who is hereby authorized and commissioned as the Agent of the State to receive the said Fugitive, and convey him to the State of Idaho, there to be dealt with in accordance with the law.

In Testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State. Done at the City of Boise this thirteenth day of February in the year of our Lord one thousand nine hundred and six and of the Independence of the United States the one hundred and thirtieth.

[GREAT SEAL.] F. R. GOODING.

By the Governor:
WILL H. GIBSON,
Secretary of State.

k. That in all of those acts and doings as aforesaid the said Van Duyn and the said Governor of the State of Idaho were
10 aided, counseled and advised by one James H. Hawley, an Attorney at Law residing in Boise City, State of Idaho, County of Ada.

l. That in each and every, all and singular of said proceedings, it was well known to the said Van Duyn, the said Governor and the said Hawley, that, in truth and in fact, your petitioner was not in the State of Idaho on the 30th day of December, A. D. 1905, nor at any time near that date; that the said Van Duyn, the said Governor and the said Hawley conspired, confederated and agreed together and with each other, and with other persons to your petitioner unknown, as your petitioner is informed and believes, to avoid the constitu-

tion of the United States and the Act of Congress, made pursuant thereto, which provides for the rendition of one who is a fugitive from justice which said constitution and said Act of Congress provides for such rendition only when the person accused of an alleged crime was actually in the State where the alleged crime was alleged to have been committed; in his own corporal person at the time of such alleged commission. And for the purpose of securing the body of your petitioner at and within the State of Idaho, at all hazards, in violation of said constitution and said Act of Congress, and solely to that end, the following proceedings were connived at, devised and agreed upon, by and between the said parties as aforesaid, and others, as this petitioner is informed and believes to this petitioner unknown.

m. That as a part of the said agreement to prevent your petitioner from asserting his Constitutional rights, under Clause 2, of Section 2, of Article IV of the Constitution of the United States and the Act of Congress made pursuant thereto, the said Mills, so appointed as aforesaid, was directed to go to the State of Colorado to there present his requisition, in company with the said James H. Hawley, to the Governor of the State of Colorado, and to take such actions and proceedings in connection with the said Governor, and other persons to your petitioner unknown, under the advice and counsel of the said James H. Hawley, as would result in kidnapping and in forcibly taking the body of your petitioner from the State of Colorado and removing it to the State of Idaho in defiance of the Courts and all process of law in said State.

11 *n.* That as your petitioner is informed and believes, the said Mills and the said Hawley did arrive in the said City of Denver on Thursday the 15th day of February, A. D. 1906, at the hour of about eleven o'clock in the forenoon of said day; that they did forthwith present themselves at the office of the Governor of said State, and that there in connection with the said Governor, and others to your petitioner unknown, and in pursuance of said conspiracy, said confederacy and agreement, as aforesaid, they did further conspire, confederate and agree with the said Governor, and with others to your petitioner unknown as aforesaid, to cause the body of your petitioner to be arrested at a time and under circumstances which would and did prevent your petitioner from making any application to the Courts of the State of Colorado to test the right of the Governor to issue such requisition, or to review his acts in connection therewith, under the constitution of the United States and said Act of Congress made in pursuance thereof.

o. And to that end it was agreed by and between the said confederates and conspirators that no move should be made until some time during the night of Saturday the 17th day of February, A. D. 1906, after the business of the day had closed, after the Court had adjourned, after the judges thereof had departed to their homes, and after counsel who might otherwise have been obtained, had likewise departed to their homes, or elsewhere; that such arrest when made should be kept a secret; that the body of your petitioner should be secretly clandestinely hurried out of the State of Colorado with all

possible speed, without the knowledge of his friends or his counsel, or any one connected with him, and in defiance of his rights and with the express and avowed purpose of depriving him of the constitutional guarantees hereinafter set forth. And in this connection your petitioner avers that he was in the City of Denver, openly and above board, engaged in his business during the business hours of all day Thursday, and many days theretofore, all day Friday and all day Saturday, and was at his home in said City during each of the nights of said days, and for many nights theretofore, and notwithstanding such presence, no attempt was made to arrest your petitioner until about the hour of 11:30 o'clock P. M., when
12 the house of your petitioner was surrounded by the said confederates, or persons acting by, through or under their directions, and a raid was made thereon, and your petitioner was found in his said house, where the body of your petitioner was arrested.

p. Your petitioner further avers in this connection, that it was not the purpose of said confederates and conspirators to arrest your petitioner so early in the evening as 11:30 o'clock, but owing to the fact that a like requisition had been issued under like circumstances, for the body of one Charles H. Moyer, who had been in the City of Denver, openly and above board continuously during the days and nights of Thursday and Friday and during all of the day Saturday, and the further fact that the said Moyer was about to depart on business for the State of Dakota, on a train leaving Denver at 8.45 P. M. on Saturday, the 17th day of February, A. D. 1906, the arrest of said Moyer was effected, and thereupon the body of your petitioner was forthwith sought and arrested, and, in company with the said Moyer and one William D. Haywood, who had been arrested under like circumstances with your petitioner, he was thrown into the County jail of the City and County of Denver.

q. Your petitioner avers that every precaution was taken pursuant to said agreement and conspiracy to prevent his friends and his counsel from having any knowledge whatever of the fact of such arrest; and your petitioner further avers that no one of his friends or his counsel had any knowledge whatever of the facts of such arrest until after your petitioner had been forcibly removed from the State of Colorado, as hereinafter stated.

13 *r.* Your petitioner further avers, on his information and belief, that said answer was made pursuant to a preconceived scheme, confederation and agreement between the Governor of the said State of Colorado, and the said Hawley and the said Mills, pursuant to said previous schemes, confederation and agreement with the Governor of the State of Idaho, as aforesaid, for the express purpose of preventing the issuance of a Writ of *Habeas Corpus* to test the legality of your petitioner's detention, they and each of them well knowing that the constitution of the United States, and the Rendition Statute made in pursuance thereof were intended to be and in case a Writ of *Habeas Corpus* had issued would have been an absolute protection to the body of your petitioner, and would have prevented its removal, under the circumstances, from the State of Colorado to the State of Idaho; and said acts, and each of them, were

done with the express purpose and intent of preventing any application for or the issuance of a Writ of *Habeas Corpus* to test the legality of your petitioner's detention, and that by reason thereof and of all of the acts and things aforesaid, your petitioner was as a matter of fact, absolutely prevented from obtaining the benefit of the Writ to test the question of whether or not he was a fugitive from justice from the State of Idaho, within the meaning and intent of Clause 2, of Section 2, of Article IV of the Constitution of the United States, and Section 5278 of the Revised Statutes of the United States made pursuant thereto.

s. Your petitioner further avers that between the hours of five and six o'clock on Sunday morning the 18th day of February, A. D. 1906, the same being a non juridical day, the said Mills, acting as the State Agent of the State of Idaho, together with one Bulkeley Wells, the Adjutant General of the State of Colorado, and the Orderly of said Wells, one Meldrum, and certain armed guards, being a part of the forces of the militia of the State of Colorado, and all acting pursuant to the said conspiracy and agreement so made and entered into as aforesaid by the said Governor of the State of Idaho, the said Governor of the State of Colorado, the said James H. Hawley and the said Owen M. Van Duyn, did provide a special train
14 for the purpose of forcibly removing the body of your petitioner from the State of Colorado, and that between the hours of said day the said body of your petitioner was forcibly placed on said train, and was forthwith removed, with all possible speed to the State of Idaho; that prior to such removal and at all times after his incarceration in the jail of the city and county of Denver your petitioner requested to be allowed to communicate with his friends and his counsel and his family, and said privilege was absolutely denied to him.

t. That the said train made no stop at any considerable station on the line of travel from the City of Denver to Boise City, Idaho, but proceeded with great and unusual speed, and your petitioner was accompanied by and surrounded with armed guards, consisting of certain members of the State Militia of the State of Colorado, acting under the orders and directions of the Adjutant General of that State, who accompanied his command in person throughout the entire journey.

u. That instead of proceeding to Caldwell and of taking the body of pour petitioner before the said M. I. Church, the same was taken to Boise City, and there thrown into the Penitentiary and placed in solitary confinement in a cell in the said penitentiary, where the said body, for many days thereafter, remained in solitary confinement.

v. That for many days after said incarceration your petitioner was allowed to communicate with no one, except upon one occasion when he was permitted to hold a conversation with his attorney, within view at all times, and part of the time within hearing, of the Warden of the said penitentiary.

w. That after being held in the penitentiary from about the hour of nine o'clock A. M. on Monday the 19th day of February, A. D.

1906, until the hour of above seven o'clock A. M. of the 21st day of February, A. D. 1906, the body of your petitioner was for the first time taken before the said M. I. Church, at which time and place your petitioner had read to him the Complaint of the said Van Duyn, hereinbefore referred to and set out.

15 *x.* That thereupon your petitioner protested against the jurisdiction of the said M. I. Church for the reason that he had been forcibly removed from the State of Colorado, in violation of his Constitutional rights, and for other reasons peculiar to the Statutes of the State of Idaho, which are unnecessary to a determination of the question here presented.

y. That thereupon your petitioner was returned to the penitentiary at Boise City and reincarcerated, as aforesaid, where he remained until the 13th day of March A. D. 1906, when he was placed in the custody of the Sheriff of Canyon County, Idaho, and removed to the County Jail of said County, in the town of Caldwell, where he is now incarcerated.

z. That your petitioner is not and was not a fugitive from justice; that he was not present in the State of Idaho when the alleged crime was alleged to have been committed, nor for months prior thereto, nor thereafter, until brought into said State as aforesaid.

aa. That thereafter and on, to-wit, Friday the 23rd day of February, A. D. 1906, your petitioner presented a petition to the Supreme Court of the State of Idaho asking for a Writ of *Habeas Corpus* to test the validity of his imprisonment upon the matters and things hereinbefore set forth, in which the same matters and things were substantially alleged with respect to the said requisition proceedings as are alleged herein.

bb. That thereupon the said Supreme Court did order a Writ of *Habeas Corpus* to issue in said proceeding and did make the same returnable on Thursday the 1st day of March, A. D. 1906.

cc. That on the said first day of March, A. D. 1906, the said E. L. Whitney did make a return and did file the same in said Court, which said return was and is in words and figures as follows: to-wit:

In the Supreme Court of the State of Idaho.

In re GEORGE A. PETTIBONE.

STATE OF IDAHO, *County of Ada, ss:*

16 The Return of E. L. Whitney, Warden of the State Penitentiary of the State of Idaho, to the Writ of *Habeas Corpus* Hereto Annexed.

In obedience to the Writ of *Habeas Corpus* hereto annexed, I do hereby certify and return to the Honorable the Supreme Court of the State of Idaho, as follows:

First: That I am the duly appointed acting Warden of the State Penitentiary of the State of Idaho, situated near Boise City, and in Ada County, Idaho. That the said George A. Pettibone was at the

time of the service of said Writ, and is now, in my custody and detained by me in said State Penitentiary, and that the reasons for such detention are as follows: That on the 12th day of February, 1906, a complaint sworn to by one Owen M. Van Duyn, County Attorney of Canyon County, State of Idaho, was filed in the office of the Probate Judge of Canyon County, Idaho, charging said George A. Pettibone with the crime of murder, a copy of which said complaint is hereto annexed, made a part hereof, and marked "A." That on said day the said Probate Judge issued his Warrant of Arrest, based on said Complaint, a copy of which said Warrant, together with the return of the Sheriff of said Canyon County thereto, is hereto annexed, made a part hereof, and marked "B." That on the 18th day of February, 1906, an order was made by the Probate Court of said Canyon County, State of Idaho, in which said order was recited that the County Jail of said Canyon County was an unfit place for the detention of said George A. Pettibone, and directing that said person should be transferred to the Idaho State Penitentiary for detention, and said Penitentiary was therein designated as the place of detention for said person. That a copy of said order is hereto annexed and made a part hereof and marked "C." That on the said 18th day of February, 1906, the said George A. Pettibone was by J. C. Nichols, the qualified and acting Sheriff of Canyon County, delivered to me. That since that time the said George A. Pettibone has been detained in said penitentiary and in my custody, except that on the 21st day of February, 1906, and again on the 24th day of February, 1906, the said George A. Pettibone was, and on each of said days
17 was, by said J. C. Nichols, Sheriff as aforesaid, removed from said Penitentiary and taken to Caldwell, in Canyon County, State of Idaho, and before said Probate Judge of said Canyon County, upon matters before said Judge connected with said charge against him and was also on said 24th day of February, 1906, taken before the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County, to attend before said Court at the time of impannelling the Grand Jury, theretofore ordered to attend the session of said Court then and there being held. That upon each of said days, after having been in attendance upon said courts as aforesaid, the said George A. Pettibone was by said Sheriff brought back to said State Penitentiary, and again placed under my care.

Second: I further certify and return that I am not holding said George A. Pettibone as an inmate of said Penitentiary, and that I am not detaining him for any reason except under said order of said Probate Judge, and as an accommodation to said Sheriff of said Canyon County. That said George A. Pettibone is subject at all times to the orders of said Probate Court and said District Court, hereinbefore mentioned, and of the Sheriff of said Canyon County, and that said Sheriff is the actual custodian of said person, and removes said person from and returns him back to said Penitentiary, as by said Courts required and directed, and that my custody of said person is temporary only, and all of my acts done as such temporary

custodian of said person are done for said Sheriff, in whose custody said person really is.

Third: I further certify and return that the confinement of said George A. Pettibone in the said Penitentiary under my charge, instead of in the County Jail of said Canyon County, has been since the 21st day of February, 1906, with the assent and concurrence of said George A. Pettibone, and his attorneys, and that the officers in charge of the prosecution of said George A. Pettibone have at all times since said date been willing, if it was so desired by said George A. Pettibone to remove him from said Penitentiary, and confine him in said County Jail, until the case against him is disposed of. That a Grand Jury is now in session in said hereinbefore mentioned District Court, and amongst other things is investigating the charge against said George A. Pettibone and will, as I am informed and believe, report their conclusions upon said charge against said
18 George A. Pettibone, within the next ten days.

And I do further allege, as part of this return that the imprisonment and restraint of said George A. Pettibone is not without due process of law, and is not contrary to the provisions of the Constitution of the United States, or the Constitution of the State of Idaho.

And I now have the body of said George A. Pettibone before this Court, as I am by said Writ of *Habeas Corpus* commanded.

E. L. WHITNEY,
Warden State Penitentiary of Idaho.

STATE OF IDAHO, *County of Ada, ss:*

E. L. Whitney, being first duly sworn, deposes and says that the above return made by him is true to the best of his knowledge, information and belief.

E. L. WHITENY.

Subscribed and sworn to before me this 1" day of March, 1906.

G. G. ADAMS,
Notary Public. [SEAL.]

J. J. GUHEEN, *Att'y Gen'l,*
O. M. VAN DUYN, *Co. Att'y, Canyon Co.,*
JAMES H. HAWLEY, AND W. A. STONE,
Attorneys for E. L. Whitney.

That the exhibits referred to in said return were and are the complaint of said Owen Van Duyn and the Warrant of the said M. I. Church issued thereon, which were and are in words and figures as hereinbefore set out.

dd. That thereafter and on Thursday, the 8th day of March, A. D. 1906, and within the time allowed by the Court, your petitioner did file an answer to said return, in which he did set up the matters and things hereinbefore alleged in manner and form as herein alleged, so as to present to the said The Supreme Court of the State
19 of Idaho the question of whether or not the jurisdiction of the Courts of the State of Idaho could and would attach to the

person of a defendant whose presence had been procured in said State by the connivance, conspiracy and fraud of the executive officers of said State and in violation of his constitutional rights and the Act of Congress made pursuant thereto.

ee. That thereafter and on Friday the 9th day of March, A. D. 1906, the said return and the answer thereto came on for hearing before the Supreme Court of said State, when and where the said Whitney asked leave to file an amended and supplemental return, which was allowed, and which was and is in words and figures as follows, to-wit:

In the Supreme Court of the State of Idaho.

In re GEORGE A. PETTIBONE.

Comes now E. L. Whitney, Warden of the State Penitentiary of the State of Idaho, and by permission of the Court first had and obtained, amends his return heretofore made herein by adding after the third paragraph in the body of said return as follows, to-wit:

4. I further certify and return, that the Grand Jury of Canyon County, State of Idaho, did on the 7th day of March, 1906, find an indictment against said George A. Pettibone for the crime of murder, and charging him therein with having on the 30th day of December, 1905, in the town of Caldwell, County of Canyon, State of Idaho, unlawfully, wilfully, deliberately, premeditatedly, feloniously, and of his malice aforethought killed and murdered one Frank Steunenberg; the offence charged in said indictment being the same offence and crime charged against said George A. Pettibone in Exhibit A to the original return herein annexed; and that on said 7th day of March, 1906, said Grand Jury brought said indictment into Court, presented the same to the Court, and the said indictment was in said Court duly filed by the Clerk thereof; and a bench warrant issued thereon from said Court, and by the Clerk of said Court, in due form, which said bench warrant was duly served on said George A. Pettibone, on March 8, 1906, at said State Penitentiary, by said Sheriff of said Canyon County; and that on the 9th day of March, 1906, the said George A. Pettibone was by the Sheriff of said Canyon County taken to the said town of Caldwell wherein said Court is now sitting, and duly arraigned upon said charge contained in said indictment; and that on said day and after said arraignment, and at the request of the attorneys for the said George A. Pettibone, being the same attorneys representing him in this proceeding, said request not being opposed by the attorneys for the prosecution in said cause, the time to plead to said indictment was fixed for March 16th, 1906, in said Court; and that after said arraignment, the said George A. Pettibone was by the Sheriff of said Canyon County brought back to Ada County, State of Idaho, and again temporarily placed in my charge.

E. L. WHITNEY,
Warden of Idaho State Penitentiary.

STATE OF IDAHO, *County of Ada, ss:*

E. L. Whitney, being duly sworn, deposes and says that the foregoing amendment to the return herein is true to the best of his knowledge information and belief.

E. L. WHITNEY.

Subscribed and sworn to before me this 9th day of March, 1906.

[SEAL.] G. G. ADAMS,
Notary Public.

JOHN J. GUHEEN,
Attorney General of Idaho,
O. M. VAN DUYN,
County Attorney of Canyon Co., Idaho,
JAMES H. HAWLEY,
W. E. BORAH,
W. C. STONE,
Attorneys for E. L. Whitney.

21 To which said amended and supplemental return your petitioner filed an answer admitting the truth of the matters and things therein stated, but denying the sufficiency of such additional and supplemental return.

ff. Your petitioner further avers that thereupon the said Whitney presented a motion to strike from the answer of your petitioner all those parts, matters and things which related to the manner and method of obtaining the presence of your petitioner within the State of Idaho, which were substantially alleged in said answer as hereinbefore set out. That thereupon the said Supreme Court did hear argument upon said motion and after such argument did take the said motion under advisement.

gg. That thereafter and on, to-wit, the 12th day of March, A. D., 1906, the said Supreme Court of the State of Idaho did enter an order sustaining said motion, with an oral statement in effect that it was immaterial how the presence of the body of your petitioner came to be in the State of Idaho; that the Courts of Idaho were powerless to inquire into the manner or method by which such presence had been obtained, whatever power or authority the Courts of the State of Colorado might have had in the premises; and thereupon the said matter so relating to the said abduction and kidnapping of your said petitioner was stricken from said answer to the said return.

hh. That thereafter and on, to-wit, the said 12th day of March, A. D. 1906, an order was made by the said Supreme Court of the State of Idaho based upon the said return, the answer thereto, the amended and supplemental return, and the answer thereto, remanding the custody of your petitioner to the Idaho authorities to await trial and disposition on the said indictment of the said Grand Jury referred to in said supplemental return.

Third. That the said arrest and detention of your said petitioner, in manner and form and under the circumstances as aforesaid, is in violation of law and in derrogation of his constitutional rights in the following particulars, to-wit:

22 *a.* That said arrest and detention violates the fourth amendment to the Constitution of the United States in this, that said Article guarantees to your petitioner his right to be secure in his person against unreasonable seizure.

b. That said arrest and detention is in violation of the fifth amendment to the Constitution of the United States in this, that said amendment provides that no person shall be deprived of his life, liberty or property without due process of law.

c. That said arrest and detention was made in furtherance of a scheme of fraud and conspiracy to violate and in violation of Clause 2 of Section 2 of Article IV of the Constitution of the United States and Section 5278 of the Revised Statutes of the United States made in pursuance thereof, and that the jurisdiction of the Courts of the State of Idaho over the person of your petitioner was secured by and arises under an absolute violation of those provisions, agreed to, connived at and carried out by the Governmental officers of the State of Idaho and State of Colorado.

d. That said arrest and detention is in violation of the fourteenth amendment to the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws.

e. That the said arrest, detention, and imprisonment of your petitioner was brought about by and resulted solely from a wilful, premeditated and deliberate violation of the Constitution of the United States and the Act of Congress, and all jurisdiction of the Courts of the State of Idaho over the person of your petitioner has been acquired and is founded upon the result of that conspiracy, violation and fraud.

Fourth. That by the action of the Supreme Court of the State of Idaho, heretofore invoked as aforesaid, your petitioner has
23 been denied all manner of redress for said acts and doings in the said Courts of the State of Idaho.

Wherefore Your petitioner prays:

a. That this Court will take jurisdiction and issue its Writ of *Habeas Corpus* herein.

b. That it will direct the production of the body of your petitioner before this Honorable Court, in manner and form as required by the Statutes of the United States.

c. That upon a final hearing had therein, that it will enter an order enlarging your petitioner.

And your petitioner will ever pray.

FRED MILLER,
Residence, Spokane, Washington,
JOHN F. NUGENT,
Residence, Silver City, Idaho,
EDMUND F. RICHARDSON,
Residence, Denver, Colorado,
Attorneys for Petitioner.

STATE OF IDAHO, *County of Canyon, ss:*

George A. Pettibone Being first duly sworn, deposes and says: That he is the petitioner above named, that he has heard read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters, that he believes it to be true.

GEORGE A. PETTIBONE.

Subscribed and sworn to before me this 14th day of March, 1906.

[SEAL.] JOHN A. TUCKER,
Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County.

24 Endorsed: No. 267. In the Circuit Court of the United States for the District of Idaho, Central Division. In the matter of the application of George A. Pettibone for a writ of *Habeas Corpus*. Petition. Filed March 15th, 1906. A. L. Richardson, Clerk. Fred Miller, J. F. Nugent, and E. F. Richardson, Attorneys for Petitioner.

25 *Writ of Habeas Corpus.*

In the Circuit Court of the United States for the District of Idaho.

The President of the United States to Jasper Nichols, Greeting:

You are hereby commanded, that you have the body of George A. Pettibone by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said George A. Pettibone shall be called or charged, before the Honorable James H. Beatty acting Judge of the Circuit Court of the United States for the District of Idaho, at the United States Court-room, in Boise City, in said District, at 10 o'clock in the forenoon of Monday March 19th, 1906, to do and receive what shall then and there be considered, concerning the said George A. Pettibone and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this March 15th, 1906.

[SEAL.] A. L. RICHARDSON, *Clerk.*

I hereby certify that I received the Within Writ of *Habeas Corpus* at Boise, Idaho, on March 15th, 1906, and that I served the same upon Jasper Nichols, the identical person to whom the writ is directed, at Boise, Idaho, on March 16th, 1906, by handing to and leaving with him personally, a duplicate of the within Writ.

R. ROUNDS,
U. S. Marshal,
By W. R. BRYON, *Deputy.*

Boise, Idaho, March 16, 1906.

Endorsed: No. 267. In the U. S. Circuit Court, District of Idaho. *In re* George A. Pettibone, Petitioner. Writ of *Habeas Corpus.* Returned and filed March 16, 1906. A. L. Richardson, Clerk.

26 *Order.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Now, on the 15th day of March, A. D. 1906, the above entitled matter coming on to be heard upon the verified petition of the above named applicant for a Writ of *Habeas corpus* herein, and the Court having read the said petition, and having considered its contents, and being fully advised in the premises, upon motion of Fred Miller, John F. Nugent and Edmund F. Richardson, Counsel for the applicant and petitioner, does hereby order that a Writ of *Habeas Corpus* do issue herein against Jasper Nichols, requiring him to produce the applicant before this Court on Monday the 19th day of March A. D. 1906, at the hour of 10 o'clock A. M. then and there to do and receive and abide by what may be adjudged in that behalf by the Court.

JAS. H. BEATTY, *Judge.*

Endorsed: No. 267. In the Circuit Court of the United States District of Idaho, Central Division. In the matter of the application of George A. Pettibone for a Writ of *Habeas Corpus.* Order. Filed March 15, 1906. A. L. Richardson, Clerk.

27 *Stipulation.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting — and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Comes now the above named petitioner by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and the Respondent Jasper Nichols by his Attorneys James H. Hawley and William E. Borah, Esqs., and stipulate: That upon all hearings had in the above-entitled matter in the above-entitled Court, prior to the final disposition thereof, the personal presence of the applicant is hereby expressly waived, and such proceedings may be had and taken by

the Court as though he were personally present, until the rendition of the final judgment herein by said Court.

Dated at Boise, Idaho, this 15th day of March, A. D. 1906.

FRED MILLER,
JOHN F. NUGENT,
EDMUND F. RICHARDSON,
Attorneys for Petitioner.
J. H. HAWLEY,
W. E. BORAH,
Attorneys for Respondent, Jasper C. Nichols.

Endorsed: No. 267. In the Circuit Court of the United States for the District of Idaho, Central Division. In the matter of the application of George A. Pettibone for a Writ of *Habeas Corpus*. Stipulation. Filed March 15, 1906. A. L. Richardson, Clerk.

28 In the Circuit Court of the United States for the District of Idaho.

The President of the United States to Jasper Nichols, Greeting:

You are hereby commanded, that you have the body of George A. Pettibone by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said George A. Pettibone shall be called or charged, before the Honorable James H. Beatty, acting Judge of the Circuit Court of the United States for the District of Idaho, at the United States Courtroom, in Boise City, in said District, at 10 o'clock in the forenoon of Monday March 19, 1906, to do and receive what shall then and there be considered, concerning the said George A. Pettibone and have you then and there this Writ.

Witness the Honorable Melville *M.* Fuller Chief Justice of the Supreme Court of the United States this March 15th, 1906.

[SEAL.] A. L. RICHARDSON, *Clerk.*

Endorsed: No. 267. In the U. S. Circuit Court, District of Idaho. *In re* George A. Pettibone, Petitioner. Writ of *Habeas Corpus.*

29 *Answer to Writ.*

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Central Division.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Return of Jasper C. Nichols, Sheriff of Canyon County, State of Idaho, to the Writ of *Habeas Corpus* Hereto Annexed.

In obedience to the writ of *habeas corpus* hereto annexed, I do hereby certify and return to the Honorable above Court, and allege the facts concerning this matter to be as follows and not otherwise:

1. That I am the duly elected, qualified and acting Sheriff of Canyon County, State of Idaho and have been such at all times herein mentioned.

2. That the said George A. Pettibone was at the time of the service of the above writ and is now in my custody and detained by me in the County Jail of Canyon County, State of Idaho, and that the reason for and the facts concerning the detention of said George A. Pettibone are as follows and not otherwise: That upon the 7th day of March, 1906, a Grand Jury for the County of Canyon duly empanneled, organized and empowered to enquire into all offences committed within the County of Canyon against the laws of the State of Idaho, duly found and presented an indictment against said George A. Pettibone for the crime of murder, charging him in said indictment with having on the 30th day of December, 1905, in the town of Caldwell, County of Canyon, State of Idaho, unlawfully, wilfully, deliberately, premeditatedly, feloniously, and with malice aforethought killed and murdered one Frank Steunenberg, and that a copy of said indictment is hereto attached, marked Exhibit "A" and made a part of this return.

That the offence charged in said indictment is the same offence and crime charged against George A. Pettibone in the complaint and proceedings for extradition referred to in the petition of petitioners. That the said above indictment was upon the 7th day of March, 1906, by the said Grand Jury duly brought into Court and presented to the Court and duly filed and in all respects duly presented according to law. That a Bench Warrant was thereupon issued from said Court by the Clerk of said Court in due form, which said Bench Warrant, a copy of which is hereto attached and marked Exhibit "B," was duly served on said George A. Pettibone on March 8, 1906, by the undersigned Jasper C. Nichols, Sheriff of Canyon County, State of Idaho, and that said George A. Pettibone was then and there taken in charge by the undersigned Sheriff of Canyon County, Idaho, and upon the 9th day of March, 1906, the said George A. Pettibone with his Counsel appeared in the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County, and was then and there duly arraigned upon said charge contained in said indictment; and at the request of the attorneys for said George A. Pettibone being the same attorneys representing him in these proceedings, said request not being opposed by the attorneys for the prosecution of said cause, the time to plead to said indictment was fixed for March 16, 1906, in said Court; and that after such arraignment said George A. Pettibone was remanded to the custody of the undersigned, the said Sheriff of Canyon County, and that he has ever since been and now is held in the custody of the undersigned Sheriff by reason of the indictment aforesaid and upon the Warrant issued thereon, and not otherwise.

That no trial has been had upon said indictment for the offence charged therein, and that said George A. Pettibone is now awaiting trial upon said indictment in the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County for the offence charged in said indictment, and that

he has never been admitted to bail, nor has any order of the Court or the Judge thereof been made to that effect.

3. And I further allege as a part of this return that the imprisonment and restraint of said George A. Pettibone is not without due process of law and not contrary to the provisions of the Constitution of the United States or the Constitution of the State of Idaho, and solely by reason of the indictment and proceedings thereon as aforesaid and for the purpose of detaining said George A. Pettibone for the trial upon said indictment for the offence therein alleged to have been committed.

And I now have the body of said George A. Pettibone before this Court as I am by said Writ of *Habeas Corpus* commanded.

JASPER C. NICHOLS.

STATE OF IDAHO, *County of Ada, ss:*

Jasper C. Nichols being first duly sworn, deposes and says: That the above return made by him is true to the best of his knowledge, information and belief.

JASPER C. NICHOLS.

Subscribed and sworn to before me this 19th day of March, 1906.

A. L. RICHARDSON.

O. M. VAN DUYN,
Co. Atty,
J. H. HAWLEY AND
W. A. STONE AND
W. E. BORAH,
Attorneys for J. C. Nichols,
Sheriff of Canyon County, Idaho.

32 In the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County. February Term, A. D. 1906.

STATE OF IDAHO, Plaintiff,
vs.
WILLIAM D. HAYWOOD, CHARLES H. MOYER, GEORGE A. PETTIBONE, and JOHN L. SIMKINS, Defendants.

Murder.

William D. Haywood, Charles H. Moyer, George A. Pettibone, and John L. Simpkins, are accused by the Grand Jury of the County of Canyon, State of Idaho, upon their oaths, by this indictment, found this 7th day of March, 1906, of the crime of murder committed as follows: The said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins on the 30th day of December, A. D. 1905, at the City of Caldwell, in said County of Canyon, State of Idaho, did then and there unlawfully, wilfully,

deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, in and upon one Frank Steunenberg make an assault, and with a certain contrivance generally and commonly called a bomb, made out of and loaded with dynamite, giant powder caps, sulphuric acid, chloride of potash and other materials and explosives to the Grand Jury unknown, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, shoot off, discharge and explode said bomb at, against and upon the person of him, the said Frank Steunenberg with the intent then and there on the part of said William D. Haywood, Charles H. Moyer, George A. Pettibone, John L. Simpkins and each and every of them with the bomb aforesaid, by means of shooting off, discharging and exploding said bomb as aforesaid, did then and there unlawfully, wilfully, premeditatedly, feloniously, and of their and each of
33 their malice aforethought, strike, penetrate, injure and inflict upon the body of said Frank Steunenberg one mortal wound, of which said mortal wound so inflicted as aforesaid, the said Frank Steunenberg then and there died; whereby at the time and place and in the manner and form aforesaid, the said William D. Haywood, Charles H. Moyer and George H. Pettibone, and John L. Simpkins did, unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, him, the said Frank Steunenberg, kill and murder.

And the said Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That the said William D. Haywood, Charles H. Moyer, George A Pettibone and John L. Simpkins, unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought did on the 30th day of December, 1905, at the City of Caldwell, in the County of Canyon, State of Idaho, in and upon said Frank Steunenberg make an assault and did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought a certain deadly contrivance made out of dynamite and other explosives to the jurors unknown, and fasten together and contained in a box or other receptacle, the kind or character of which is to the jurors unknown, and which said box or receptacle containing said dynamite and other explosives the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought then and there had in their possession and under their control set off, discharge, and explode in some way or manner to the Grand Jurors unknown, at, upon and against the body of him, the said Frank Steunenberg, with the intent then and there and thereby, on the part of said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins and each and every of them, him, the said Frank Steunenberg to kill and murder; and that the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John
34 L. Simpkins, by means of setting off, and exploding the said Dynamite and other explosives in said box or receptacle had

and contained, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, strike, penetrate, injure and inflict upon the person of him, the said Frank Steunenberg one mortal wound of which said mortal wound so inflicted as aforesaid, the said Frank Steunenberg did then and there die; whereby at the time and place aforesaid and in the manner and form aforesaid, the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins did unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of the- malice aforethought him, the said Frank Steunenberg, kill and murder.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present: That the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, unlawfully, wilfully, deliberately, premeditatedly, feloniously, and of their and each of their malice aforethought and intending thereby him, the said Frank Steunenberg, to kill and murder, did on the 30th day of December, 1905, at the City of Caldwell, in the County of Canyon, State of Idaho, place at and near a certain gate opening into and upon the land and premises used by said Frank Steunenberg as and for a residence and upon which a house occupied by said Frank Steunenberg as a residence was situate, a certain tin box containing certain explosives, to-wit ten pounds of dynamite, ninety-nine giant powder caps, chloride of potash, and sulphuric acid in bottles, in amount to the Grand Jurors unknown, together with other materials and explosives to the jurors unknown, and a more particular description of which the jurors are unable to give and so arranged and contained that upon the said gate being opened by said Frank Steunenberg a line or string so placed as to connect said box with said gate would partially turn and tilt said bottles containing said sulphuric acid and cause said acid to run out of said bottles and into, upon and over said giant powder caps, dynamite, choloride of potash and other explosives in said box contained, and thus cause the said giant powder caps, dynamite, choloride of potash and other explosives to be set off and exploded, the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, then and there well knowing that the setting off and exploding said giant powder caps, dynamite, Chloride of potash and other explosives in said box contained, in the manner aforesaid, by the said Frank Steunenberg would then and there cause the death and result in the death of him, the said Frank Steunenberg; and he, the said Frank Steunenberg, not knowing that said box was or had been so placed at or near said gate as aforesaid and not knowing that by opening said gate said articles contained in said box would be set off and exploded did on said 30th day of December, 1905, at said City of Caldwell, in said County of Canyon, and State aforesaid, open said gate opening into and upon said land and premises used by said Frank Steunenberg, as and for a residence, and upon which his residence was situate as aforesaid, and by such opening of said gate caused said line or string connecting said box containing said explosives and said gate to turn and tilt said bottles contain-

ing said sulphuric acid and caused said acid to run out of said bottles and into, upon and over said giant powder caps, dynamite, choloride of potash and other explosives in said box contained, and set off and exploded said giant powder caps, dynamite, choloride of potash and other explosives in said box contained, and set off and exploded said giant powder caps, dynamite, chloride of potash and other explosives at, upon and against the body of him, the said Frank Steunenberg, and then and there by reason of said explosion inflicted upon the body of him, the said Frank Steunenberg, one mortal wound, of which mortal wound so inflicted as aforesaid, the said Frank Steunenberg then and there died; whereby at the time and place and in the manner and form aforesaid, the said William
36 D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, did unlawfully, wilfully, deliberately, premeditatedly, and of their and each of their malice aforethought, him, the said Frank Steunenberg, kill and murder, contrary to form, force and effect of the Statutes in such cases made and provided, and against the peace and dignity of the State of Idaho.

OWEN M. VAN DUYN,
Prosecuting Attorney for said County.

Names of witnesses examined before the Grand Jury on finding the foregoing indictment: Sherman R. Macy, Wm. Everett Mosby, Harry Orchard, Andrew Johnson, W. S. Swain, Joseph Hutchinson, Mrs. Addie Martin, Mr. C. F. Wayne, Mr. Wm. W. Kepple, N. S. Ellis, D. C. Goodlow, C. A. Wood, Guy McGee, James Russell, Luther Bowman, A. Ballentyne, J. C. Nichols, C. P. Grimes, W. S. Maxey, J. W. Gue.

Names of witnesses whose depositions were read before the grand jury on finding the foregoing indictment: ——.

37 In the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County, February Term, A. D. 1906.

An indictment having been returned and filed in this Court on the 7th day of March, 1906, charging George A. Pettibone with the crime of Murder.

You are therefore commanded, forthwith, to arrest the above named George A. Pettibone and bring him before the said District Court to answer the said Indictment;

Given under my hand, with the seal of said Court affixed, this 7th day of March, 1906.

By Order Of Said Court:

[SEAL.] JOHN A. TUCKER, *Clerk.*

Endorsed: No. — In the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County. Bench warrant. Indictment. For Murder. Filed March 9th, 1906. John A. Tucker, Clerk.

38 Endorsed: No. 267. U. S. Circuit Court, District of Idaho, *In re* George A. Pettibone Answer to Writ. Filed March 19th, 1906. A. L. Richardson, Clerk.

39 *Stipulation.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Comes now the above named applicant and petitioner George A. Pettibone by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and comes also the defendant and respondent Jasper C. Nichols, by his Attorneys James H. Hawley and William E. Borah, and stipulate that the matters and things set forth in the return of the defendant and respondent to the Writ of *Habeas Corpus* heretofore issued herein shall be considered as true and they are hereby admitted as true as stated in the said return.

It is further stipulated and agreed that the petition of the applicant heretofore filed herein, upon which the said Writ of *Habeas Corpus* was issued, shall be taken and considered and deemed to be the applicant'- and petitioner's answer to the said return as fully to all intents and purposes as though the same were designated as an answer to said return.

Dated at Boise, Idaho, this 19th day of March, 1906.

FRED MILLER,
JOHN F. NUGENT,
EDMUND F. RICHARDSON,
Attorneys for Applicant and Petitioner.

J. H. HAWLEY,
W. E. BORAH,
Attorneys for Defendant and Respondent.

Endorsed: No. 267. *In re* George A. Pettibone. Stipulation. Filed March 19th, 1906. A. L. Richardson, Clerk.

40 *Motion to Strike Out Answer to Return.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Motion to Strike out Answer to Return.

Comes now the respondent herein and moves to strike out the answer to the return herein, upon the grounds and for the reason that said answer and the whole thereof is sham and irrelevant.

J. H. HAWLEY,
W. E. BORAH,
Attorneys for Respondent.

Endorsed: In the Circuit Court of the United States sitting in and for the District of Idaho. In the matter of the application of George A. Pettibone for a writ of *habeas corpus.* Motion to strike out answer to return. Filed March 19th, 1906. A. L. Richardson, Clerk.

41 *Demurrer to Answer to Return.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Demurrer to Answer to Return.

Comes now the respondent herein, and without waiving his motion to strike out the answer to the return herein, demurers to the answer to the return herein upon the grounds and for the reason that said answer does not state facts sufficient to constitute a defense to the allegations and showing had, made and contained in said return.

Wherefore, respondent prays to be hence dismissed without day.

J. H. HAWLEY,
W. E. BORAH,
Attorneys for Respondent.

Endorsed: In the Circuit Court of the United States sitting in and for the District of Idaho. In the matter of the application of George A. Pettibone for a writ of *habeas corpus.* Demurrer to answer to return. Filed March 19, 1906. A. L. Richardson, Clerk.

42 At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Tuesday the 20th day of March, 1906.

Present: Hon. James H. Beatty, Judge.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus*. No. 267.

On this day the Court announced its decision in this cause heretofore argued and submitted. Ordered that the Motion to strike out the Answer to the Return to the Writ of *Habeas Corpus* herein be allowed and that demurrer to the Return to said Writ be sustained.

It is further ordered that the Writ of *Habeas Corpus* issued herein be and is hereby quashed and the said Petitioner is hereby remanded to the custody of the Respondent, Jasper C. Nichols, the Sheriff of Canyon County, State of Idaho.

To the ruling of the Court in allowing the said motion to strike out the said Answer and in sustaining the said demurrer the Petitioner by his counsel excepted in due form of law, which exception is allowed by the court.

It is further ordered that said petitioner be given ten days from this date in which to file and serve a Bill of Exceptions herein and thirty days from this date in which to file said Appeal Bond.

43 *Bill of Exceptions.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus*.

Bill of Exceptions.

Be it remembered That heretofore and on, to-wit, the 19th day of March A. D. 1906, the above entitled matter came on to be heard on the return of Jasper C. Nichols to the Writ of *Habeas Corpus* heretofore issued on the petition in the above entitled cause.

Whereupon The Plaintiff and Petitioner appeared by his counsel Fred Miller, John F. Nugent and Edmund F. Richardson, and the Defendant and Respondent appeared by his Counsel William E. Borah and James H. Hawley, Esqs., and thereupon the said counsel for the said parties entered into a stipulation in writing, and filed the same with the Clerk of the Court which was and is in words and figures as follows, to-wit:

Comes now The above named applicant and petitioner George A. Pettibone, by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and comes also the Defendant and Respondent Jasper C. Nichols, by his attorneys James H. Hawley and William

E. Borah, and stipulate that the matters and things set forth in the return of the defendant and Respondent to the Writ of *Habeas Corpus* heretofore issued herein shall be considered as true and they are hereby admitted as true as stated in the said return.

44 It is further stipulated and agreed That the petition of the applicant heretofore filed herein, upon which the said Writ of *Habeas Corpus* was issued, shall be taken and considered and deemed to be the applicant'- and petitioner's answer to the said return as fully to all intents and purposes as though the same were designated as an answer to said return.

Thereupon Counsel for Respondent presented their motion to strike out the answer to the return, which was and is in words and figures as follows, to-wit:

Comes now the Respondent herein, and moves to strike out the answer to the return herein upon the grounds and for the reason that said answer and the whole thereof is sham and irrelevant.

At the same time The said Counsel for the respondent likewise presented their demurrer to the answer to the return, which said demurrer was and is in words and figures as follows, to-wit:

Comes now the Respondent herein, and without waiving his motion to strike out the answer to the return herein, demurrers to the answer to the return herein upon the grounds and for the reason that said answer does not state facts sufficient to constitute a defense to the allegations and showing made, had and contained in said return.

And thereupon and on the same day, to-wit, the 19th day of March, A. D. 1906, argument proceeded upon the said motion and the said demurrer to the said answer to the said return, and, after argument, the Court not being fully advised in the premises did take the same under advisement.

Be it further remembered That on the 20th day of March, A. D, 1906 the said matter further coming on to be heard upon the said return, the said answer thereto and the said motion and demurrer to the said answer as aforesaid, and the Court being fully advised in the premises did consider and order that the said motion and demurrer and each of them be sustained, to which order and ruling of the Court sustaining the said motion and the said demurrer, and each of them, the petitioner by his counsel then and there excepted, and such exception was then and there allowed by the Court.

45 Be it further remembered That on said last mentioned day the Court did further order that final judgment be entered dismissing the said Writ and remanding the prisoner, petitioner and plaintiff to the custody of the respondent to which final judgment, order and ruling of the Court so dismissing the said Writ and so remanding the said petitioner, plaintiff and prisoner to the custody of the respondent, counsel for the said petitioner, plaintiff and prisoner did then and there except and such exception was allowed.

Whereupon The said Petitioner asked and was given a period of ten days from and after the said 20th day of March, A. D. 1906, within which to prepare and tender his Bill of Exceptions by him re-

served in the progress on said matter as allowed; and thereupon the petitioner prayed an appeal to the Supreme Court of the United States, the prayer of which said appeal was allowed, conditioned upon the filing of a good and sufficient bond, with sureties to be approved by the Clerk of this Court, in the sum of Five Hundred Dollars, for the prosecution of said appeal; and inasmuch as all of the matters and things hereinbefore recited do not fully appear of record herein, The Petitioner, Plaintiff and Prisoner presents this his Bill of Exceptions within the time allowed by the Court and asks that the same may be signed, sealed and allowed as such Bill of Exceptions which is accordingly done this — day of March, A. D. 1906.

JAS. H. BEATTY, *Judge.* [SEAL.]

O. K.
J. H. HAWLEY,
W. E. BORAH,
Counsel for Respondent.

Endorsed: No. 267. *In re* George A. Pettibone. Bill of Exceptions. Filed March 21, 1906. A. L. Richardson, Clerk.

46 *Petition on Appeal.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Petition on Appeal.

To the Honorable James H. Beatty, District Judge and one of the Judges of the aboce named Court presiding therein:

The above named complainant and petitioner in the above entitled matter, George A. Pettibone, conceiving himself aggrieved by the order, decree and judgment made and entered by the above named Court in the above entitled cause, under date of March 20, A. D. 1906, wherein and whereby, among other things, it was ordered that the motion to strike out the answer to the return to the Writ of *Habeas Corpus* should be sustained, that the demurrer to said answer to said return should also be sustained and that the said Writ should be dismissed and that the above named complainant and petitioner should be remanded to the custody of the respondent Jasper C. Nichols, Sheriff of Canyon County, Idaho, does hereby appeal to the Supreme Court of the United States from said orders, decree and judgment, and each and every part thereof, as aforesaid, for the reason set forth in the Assignment of Errors herewith, and he prays that this his petition for his said appeal may be allowed

and that a transcript of the records, proceedings and papers upon which said orders were made, duly authenticated, may be sent to the Supreme Court of the United States within the time limited
47 by law.

Dated April 4, A. D. 1906.

FRED MILLER,
JOHN F. NUGENT,
Silver City. Ida.
EDMUND F. RICHARDSON,
Attorneys for Petitioner and Complainant.

Order.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

Done in open Court this 4th day of April, A. D. 1906.

JAS. H. BEATTY,
District Judge and one of the Judges of said United States Circuit Court Presiding Therein.

Endorsed: No. 267. In the Circuit Court of the United States sitting in and for the District of Idaho. *In re* the application of George A. Pettibone, for a Writ of *Habeas Corpus.* Petition on Appeal. Filed April 4th, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Ida. Edmund F. Richardson, Att'ys for Petitioner.

48 *Assignment of Errors.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Assignment of Errors.

Comes now The above named Applicant and Petitioner and files herewith his petition for a Writ of Error, and alleges that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States he makes the following assignments:

First: The Circuit Court of the United States erred in sustaining the motion to strike out the answer of the complainant and petitioner to the return of the respondent Jasper C. Nichols, Sheriff of Canyon County, against exception saved and allowed.

Second: That the Court erred in sustaining the demurrer of the respondent Jasper C. Nichols to the answer of the complainant and

petitioner to the return of the said Jasper C. Nichols against exception saved and allowed.

Third: That the Court erred in quashing and dismissing the Writ of *Habeas Corpus* theretofore issued in said cause against exception saved and allowed.

Fourth: That the Court erred in remanding the Complainant, Petitioner and Prisoner to the custody of the Respondent
49 Jasper C. Nichols, Sheriff of Canyon County, upon the record and proceedings in said cause against exception saved and allowed.

For which errors The complainant and petitioner prays that the orders and judgment of the said Circuit Court of the United States, sitting in and for the District of Idaho, may be reversed, vacated, set aside and for nought held, and that a judgment may be ordered to be entered sustaining the said Writ of *Habeas Corpus,* and enlarging the Complainant and Petitioner.

FRED MILLER,
JOHN F. NUGENT,
Silver City, Ida.,
EDMUND F. RICHARDSON,
Attorneys for Complainant and Petitioner.

Endorsed: No. 267. *In re* Application of George A. Pettibone, for a Writ of *Habeas Corpus.* Assignment of Errors. Filed April 4th, 1906. A. L. Richardson, Clerk.

50 *Order Fixing Amount of Bond.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

The Petitioner and Complainant Having this day filed his petition for an appeal from the decision, orders and judgment of this Court heretofore made and entered herein, to the Supreme Court of the United States, together with an assignment of errors, within due time, and also praying that an order may be made fixing the amount of security which petitioner should give and furnish upon said appeal, and said petition having this day been duly allowed.

Now, therefore, It is ordered that said appeal be allowed upon the said petitioner filing with the Clerk of this Court a good and sufficient bond in the sum of Five Hundred Dollars, within thirty days from date hereof, to the effect that if the said petitioner and complainant shall prosecute his said appeal to effect and answer all damages and costs if he fails to make his plea good, then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by this Court.

Dated at Boise, Idaho, this 4th day of April, A. D. 1906.

JAS. H. BEATTY, *Judge.*

51 Endorsed: No. 267. In the Circuit Court of the United States Sitting in and for the District of Idaho. *In re* the Application of George A. Pettibone for a Writ of *Habeas Corpus*. Order Fixing Amount of Bond, etc. Filed April 4, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Idaho, Edmund F. Richardson, Attorneys for Petitioner.

52 *Bond on Appeal.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus*.

Bond on Appeal.

Know all men by these presents That we, George A. Pettibone as principal, and Timothy Regan and Albert B. Kohny, as sureties, are held and firmly bound unto Jasper C. Nichols in the full and just sum of Five Hundred Dollars, to be paid to said Jasper C. Nichols, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 3rd day of April, in the year of our Lord one thousand nine hundred and six.

Whereas Lately at a session of the Circuit Court of the United States for the Central Division of Idaho, in a suit pending in said Court wherein the said George A. Pettibone was the petitioner and complainant and Jasper C. Nichols was the respondent, a judgment, order and decree was rendered quashing and dismissing the Writ of *Habeas Corpus* theretofore issued in said cause, and remanding the custody of the complainant and petitioner to the said Jasper C. Nichols, and,

Whereas: The said George A. Pettibone has obtained an order from said Court allowing an appeal to the Supreme Court of
53 the United States to reverse the judgment and decree aforesaid, and,

Whereas A Citation directed to the said Jasper C. Nichols is about to be issued citing and admonishing him to be and appear at the Supreme Court of the United States,

Now, the condition of the above obligation is such That if the said George A. Pettibone shall prosecute his said appeal to effect and shall answer all damages and costs that may be awarded against him if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and vitrue.

GEORGE A. PETTIBONE. [SEAL.]
TIMOTHY REGAN. [SEAL.]
ALBERT B. KOHNY. [SEAL.]

The sufficiency of the sureties on the foregoing appeal bond is hereby approved this 4th day of April, 1906.

JAS. H. BEATTY, *Judge.*

STATE OF IDAHO, *County of Ada, ss:*

Timothy Regan and Albert B. Kohny being duly sworn, each for himself says that he is a resident and free holder or house holder in the City of Boise, and County of Ada, State of Idaho, and that he is worth the amount for which he becomes liable as surety on the foregoing bond, over and above all his debts and liabilities, in unincumbered property situated within this State, over and above all just debts and liabilities, exclusive of property exempt from execution.

TIMOTHY REGAN.
ALBERT B. KOHNY.

Subscribed and sworn to before me this 3rd day of April, 1906.
[SEAL.] SHERMAN G. KING,
Notary Public.

54 Endorsed: No. 266. In the Circuit Court of the United States, Sitting in and for the District of Idaho. *In re* the Application of George A. Pettibone for a Writ of *Habeas Corpus.* Bond on Appeal. Filed April 4th, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Idaho, Edmund F. Richardson, Attorneys for Petitioner.

55 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable James H. Beatty, the Judge of the District Court of the United States sitting as the Judge of the Circuit Court of the United States for the District of Idaho, Central Division, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, between George A. Pettibone as complainant and petitioner and Jasper C. Nichols as respondent and defendant in error, a manifest error hath happened to the great damage of said George A. Pettibone, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this Writ, so that you have the same at the City of Washington on the 2d day of May next, in said Supreme Court; that the records and proceedings aforesaid being inspected the said Supreme Court may cause further to be done there in correcting that

error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, the 4 day of April in the year of our Lord one thousand nine hundred and six.

[Seal United States Circuit Court Idaho.]

A. L. RICHARDSON,
Clerk of the United States Circuit Court for the District of Idaho (Central Division).

Allowed by
JAS. H. BEATTY,
District Judge.

56 Service of the within Writ of Error and receipt of a copy thereof is hereby admitted this 4th day of April, 1906.

JAMES H. HAWLEY AND
W. E. BORAH,
Attorneys for Respondent.

57 [Endorsed:] No. 267. (Original) *In re* the application of George A. Pettibone for a Writ of *Habeas Corpus* Writ of Error Filed April 4th 1906, A. L. Richardson Clerk.

58 UNITED STATES OF AMERICA, *ss:*

Citation.

The President of the United States to Jasper C. Nichols and his Attorneys, James H. Hawley and William E. Borah, Esquires, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the District of Idaho, Central Division, wherein George A. Pettibone is complainant and petitioner and you are defendant and appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America this 4 day of April, A. D., 1906, and of the Independence of the United States the one hundred and thirtieth.

[Seal United States Circuit Court, Idaho.]

J. H. BEATTY,
United States District Judge Presiding in the Circuit Court.

Attest:
A. L. RICHARDSON, *Clerk.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

59 I hereby certify That I served the within citation on Jasper C. Nichols, the defendant and appellee therein named on the 4th day of April, 1906, at Boise, County of Ada, in the District of Idaho, by then and there delivering to the said Jasper C. Nichols a true copy of the within citation; and I further certify that I served the within citation on the within named W. E. Borah and James H. Hawley, attorneys for the said defendant, on the 4th day of April, 1906, at the City of Boise, in the County of Ada, in the District of Idaho, by then and there delivering to the said W. E. Borah and the said James H. Hawley personally a true copy of the within citation.

Dated at Boise, in the District of Idaho, this 4th day of April, 1906.

R. ROUNDS,
United States Marshal,
By W. R. BRYON, *Deputy.*

Marshal's Fees $12.00.

60 [Endorsed:] No. 267, (Original). *In re* the Application of George A. Pettibone for a Writ of *Habeas Corpus.* Citation. Filed April 4th, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Idaho, Edmund F. Richardson, Att'ys for Petitioner. R. 240 Civ., 4/4-06.

61 *Return to Writ of Error.*

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States and the same is transmitted accordingly.

[Seal United States Circuit Court, Idaho.]

Attest: A. L. RICHARDSON, *Clerk.*

62 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Ninth Judicial Circuit, District of Idaho.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Clerk's Certificate.

I, A. L. Richardson, Clerk of the Circuit Court of the United States, in and for the District of Idaho, do hereby certify the fore-

going transcript of pages numbered from 1 to 62 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled matter, which together constitute the transcript of the record and return to the annexed Writ of Error.

I further certify that the cost of the record herein amounts to the sum of $44.50, and that the same has been paid by the Plaintiff in error.

Witness my hand and the seal of said Circuit Court affixed at Boise, Idaho, this 5th day of April, 1906.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON, *Clerk.*

Endorsed on cover: File No. 20,191. Idaho C. C. U. S. Term No. 249. George A. Pettibone, appellant, *vs.* Jasper C. Nichols. Filed April 14", 1906. File No. 20,191.